

FEB 23 1984

ALEXANDER L. STEVAS.

CLERK

No. 83-196

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
Appellant

v.

MONSANTO COMPANY

On Appeal From The United States District Court  
For The Eastern District Of Missouri

**SUPPLEMENTAL BRIEF OF APPELLEE  
MONSANTO COMPANY**

W. Wayne Withers  
Frederick A. Provorny  
MONSANTO COMPANY  
800 North Lindbergh Blvd.  
St. Louis, Missouri 63167  
(314) 694-2851

Gary S. Dyer  
C. David Barrier  
LATHROP, KOONTZ, RIGHTER,  
CLAGETT & NORQUIST  
2345 Grand Avenue  
Kansas City, Missouri 64018  
(816) 842-0820

Kenneth R. Heineman  
COBURN, CROFT & PUTZELL  
One Mercantile Center  
St. Louis, Missouri 63101  
(314) 621-8575

A. Raymond Randolph  
(Counsel of Record)  
RANDOLPH & FOX  
4801 Massachusetts Avenue, N.W.  
Washington, D.C. 20016  
(202) 363-0800

David G. Norrell  
Thomas O. Kuhns  
Jacqueline A. Simmons  
KIRKLAND & ELLIS  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 857-1646

*Attorneys for Appellee*  
**MONSANTO COMPANY**

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

---

No. 83-196

---

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
Appellant

v.

MONSANTO COMPANY

---

On Appeal From The United States District Court  
For The Eastern District Of Missouri

---

**SUPPLEMENTAL BRIEF OF APPELLEE  
MONSANTO COMPANY**

---

Monsanto Company submits this Supplemental Brief pursuant to Rule 35.5 of the Rules of this Court in order to correct a misimpression that may have been created by EPA's citation of new authorities in its Reply Brief.

For the first time in its Reply Brief (at 2 n.1), EPA quotes and relies upon certain Food and Drug Administration regulations (21 C.F.R. §§ 71.15, 171.1(h)). The Court may be led to believe that under these regulations, all of the data a company submits — including trade secrets — in support of premarketing approval of food additives and color additives become available for public disclosure. EPA fails to point out, however, that the regulations it relies upon expressly exempt “trade sec-

rets" from public disclosure. See 21 C.F.R. §§ 71.15(a)(2), (a)(4), (a)(5), (b)(1)-(3), 171.1(h)(1)(ii), (iv), (v), (2)(i)-(iii). The Food and Drug Administration's regulations define "trade secrets" to include "any formula, pattern, device" used in a company's business, which gives the company "an opportunity to obtain an advantage over competitors who do not know or use it." 21 C.F.R. § 20.61(a). See also Monsanto's Brief, at 16.

Respectfully Submitted,

W. Wayne Withers  
Frederick A. Provorny  
MONSANTO COMPANY  
800 North Lindbergh Blvd.  
St. Louis, Missouri 63167  
(314) 694-2851

Gary S. Dyer  
C. David Barrier  
LATHROP, KOONTZ, RIGHTER,  
CLAGETT & NORQUIST  
2345 Grand Avenue  
Kansas City, Missouri 64018  
(816) 842-0820

Kenneth R. Heineman  
COBURN, CROFT & PUTZELL  
One Mercantile Center  
St. Louis, Missouri 63101  
(314) 621-8575

Dated: February 23, 1984

A. Raymond Randolph  
(Counsel of Record)  
RANDOLPH & FOX  
4801 Massachusetts Avenue, N.W.  
Washington, D.C. 20016  
(202) 363-0800

David G. Norrell  
Thomas O. Kuhns  
Jacqueline A. Simmons  
KIRKLAND & ELLIS  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 857-1646

*Attorneys for Appellee*  
MONSANTO COMPANY